

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
)	
v.)	2:12-CR-20-MHT
)	
)	
)	
CHIQUITA SMITH,)	

MOTION FOR DOWNWARD VARIANCE

COMES NOW, the Defendant, Chiquita Smith, by and through the undersigned counsel, J. Carlton Taylor, and submits this her Motion for Downward Variance and as ground therefore would show unto this Honorable Court as follows:

1. The Defendant a minimal (or minor) roll in this offense. It is clear from the evidence that that the Defendant had only limited contact with the co-defendant(s) who were actually filing the returns in this matter, did not know the overall plan and scheme nor did she file any returns or receive the proceeds therefrom, but also that the Defendant had a long break in contact with the co-defendants and during said time did not participate in any way in the conspiracy.
2. It should be further noted that this is also the basis for the second objection of the calculated loss attributed to this Defendant and the she would aver that the actual loss was not foreseeable by her due to her limited roll in the conspiracy nor would she have any basis for assessing the intended loss.

3. The Defendant would note that none of the victims/individuals suffered a direct financial loss as a result of the defendants' actions.

4. The Defendant would also request the Court take into account that the Defendant's parents are disabled. Her father suffers from kidney disease; her mother suffers from gastrointestinal issues, migraine headaches, a fatty liver and ulcers. The information provided by the defendant has been confirmed by her

mother.

5. The defendant has also never married and has one child from a prior relationship with Terry Peake. Elijah T. Smith- Peake (4 years of age) who resides with the defendant and her parents. The Defendant does not receive court ordered child support, but the child receives a monthly stipend in the amount of \$622 from his father's military disability benefits.

6. That the Defendant's family, namely her parent, who she cares for as well as her son, would be unable to provided for the health, education, support and maintenance of her minor child should the Defendant be incarcerated.

7. Further, there is a high likelihood that the Defendant's parent's health and well being would suffer without her being present to care for their needs.

8. The Defendant has no prior criminal history

9. That based on the totality of the circumstances a downward variance is warranted and that a sentence of 12 months of home detention is sufficient but not greater than necessary to:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. as required pursuant to 18 USC §3553(a).

WHEREFORE. PREMISES CONSIDERED, the Defendant prays this Honorable

Court will take the facts and circumstances surrounding her crime into consideration as well as the Defendant's situation and the direct effect of incarceration on the Defendant and her family and thereafter Order an appropriate sentence in this matter of 12 months of home detention. The Defendant would aver to the Court that upon consideration of the facts and circumstances, that a sentence of 12 months of home detention would be more than sufficient to meet the factors of 18 USC §3553(a) and the court's finding in *Booker*.

RESPECTFULLY SUBMITTED, this the 20th day of September, 2012

/s/ J. Carlton Taylor
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on those individuals listed below, by CM/ECF email electronic service (or by hand delivery), on this the 23rd day of September, 2012.

/s/ J. Carlton Taylor
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